

MINUTES OF THE ZONING BOARD OF APPEALS
TOWN OF ANDOVER, MASSACHUSETTS

Memorial Hall Library, Elm Sq., Andover

July 25, 2007

APPROVED 9-6-07

There were present: Anderson, McDonough, Reilly, Jeton, and Brown. Meeting opened at 6:40 pm.

PETITION NO. 3710

PETITIONER: Andover Village Associates, LLC

PREMISES AFFECTED: 429-431 South Main St.

This is a continued public hearing to discuss Anderson's draft decision. The Petitioner, Willard Perkins, was present as well as his partners, Dave Deloury & Annie Perkins. Perkins gave an overview of his suggested changes to the draft including proposed conditions outlined in the TD Banknorth letter dated 7/25/07. Perkins voiced concern about the possibility of conditions changing after the close of hearing. The following was discussed in relation to the draft decision & conditions:

Conditions #1 & 2 – idea is to keep as local as possible. Perkins doesn't want such a strict, personal condition & neither does the bank since it's too restrictive. McDonough commented on the language 'locally run' since franchises are locally run. She proposed combining conditions 1 + 2. Anderson clarified that all types of franchises are prohibited in the draft decision. McDonough's interpretation of condition #2 as prohibiting some, but not all franchises. Perkins argued that he doesn't want to violate the conditions, but neither does he want them to be overly restrictive. He suggested local control/ownership. McDonough agreed.

Conditions #3 & 4 – prohibit further use as a gas station or auto repair shop. Perkins stated that he has a car-detailing tenant in there now. Anderson offered to write the condition with a creative expiration of the temporary use.

Conditions #5, 6, 7 - Planning Board will define the layout of the site, but the building needs to conform to the SRC setback requirements. If it does not conform after Planning Board approval, Petitioner will need to come back to the ZBA. Brown suggested changing the wording to allow flexibility to build a smaller structure.

Conditions #8 – Does not exclude lottery tickets. Perkins stated that he is not concerned with lottery tickets, but does want upscale foods. Jeton reminded the Board that the neighbors were concerned with the sale of lottery tickets. Brown added that it could create a litter issue.

Condition #9 – Petitioner would have to obtain Board of Health approvals, as required. Anderson asked about seating. Perkins explained that they plan on having indoor & seasonal outdoor seating that would move inside during the winter. The approximate number of seats would be twelve, but most business will be take-out. Anderson referred to it as 'incidental seating'. Sandra Finegold, 11 Lavender Hill Lane, spoke in favor of the project. Kaija Gilmore, Inspector of Buildings informed the Board that the Board of Health regulations are concerned with seating & the Zoning By Law regulates outdoor seating. The total number of seats has to be identified. Perkins questioned whether the ZBA has jurisdiction, suggesting it would be for the Planning Board to determine. Gilmore & Anderson confirmed that the ZBA has jurisdiction. Perkins stated that the maximum indoor seats would be 24 + the counter and 8 outdoor seats.

Condition #10 – There will be no drive-up window, drive-through or exterior sales.

Conditions #11 – The proposed hours of operation are 6 a.m. – 9 p.m. Monday - Saturday and 6 a.m. – 7 p.m. on Sunday. Jeton asked for the neighbors' feelings on the hours. Reilly argued that this type of use needs an early opening. Perkins explained that similar businesses in the area open early all week. Brown voiced concern for the evening hours. Jeton & Reilly argued that people working late would avail themselves of the store. Perkins reminded the Board that the hours would be adjusted according to business. Matt Johnson, 5 Rattlesnake Hill Rd, supported an early opening & suggested the store close by 10 p.m. Mr. Johnson & other abutters voiced concern over early deliveries & noise to the neighbors. Anderson suggested that deliveries be held until later. Perkins argued that they need the early deliveries, but that 7 a.m. would be fair. Mrs. Finegold suggested deliveries by smaller vehicles. Anderson suggested the condition state no truck deliveries. Kaija reminded the Board & Petitioner that other Main Street businesses have dumpsters emptied at 5 a.m. creating noise to residential abutters. She cautioned the timing of trash removal.

Condition #12 – Related to office space above the store being restricted as outlined in the draft decision. Perkins is concerned that it may restrict even his own small business entities as it is written.

Condition #13 – Alcohol sales require Board of Selectmen approval. Reilly commented that the Petitioner needs to have the option to sell alcohol. Anderson felt that the condition restricting its sale should be kept, unless the Board of Selectmen approve it; that Petitioner does not need both ZBA & Selectmen's approval. Gilmore informed the Board that the Building & Fire Departments conduct annual inspections of premises that serve alcoholic beverages. She cautioned the Board to distinguish between selling for consumption on or off-premise. Perkins explained that they don't want to sell for on-premise consumption. Brown suggested a condition restricting on-site consumption. Mrs. Perkins asked if they could have wine tasting. Gilmore will consult with Town Counsel regarding serving wine on premises. Anderson suggested that Petitioner could also get a 1-day license for wine tasting or parties.

Anderson reviewed Perkins' e-mail issues: franchise, personal special permit, food types, hours, & which zoning district for dimensional requirements. There was also discussion regarding the existing single-family house, its temporary rental and eventual demolition. Brown then read his own comments (a copy of which was submitted to the Board, Petitioner & file). Overall, he is not in favor of the proposal. His comments related to:

1. hours & intensity
2. traffic
3. nature of business
4. long-term viability
5. visual impact on neighborhood

Brown added that he understands the current proposal is better now, but he is still concerned with what will happen if it fails. Perkins explained that he has looked into alternatives & commented on the hours/intensity of the proposed business-type, the viability (has done market research), & traffic (will slow down & create breaks in traffic flow). Perkins submitted a photo of a similar business located in Middleton. Leonard McDonough, 425 S. Main St., asked about the construction schedule. It is anticipated to begin in early spring with a late summer opening. Dave Deloury, 437 S. Main St., asked Brown for his suggested proposals. Brown suggested an office building of 4-5,000 square feet. Jeton asked the Board if they wanted to explore the lighting issue, or leave it to the Planning Board. They could place a condition that lights are contained on the lot, with no spillover, except emergency lighting. Reilly made a motion to close the public hearing. Jeton seconded the motion & the Board voted (5-0) to close the public hearing. The Board then opened deliberation.

Reilly made a motion to approve the special permit for the change in the previous non-conforming use to a general store without gas or repairs, subject to the conditions outlined in the draft decision plus the

amendments discussed tonight to be finalized in another decision. Jeton seconded the motion stating that she is in favor & not concerned due to the change in the neighborhood over time, adding that the ZBA can help develop it. McDonough was undecided. She feels it is a good idea but is concerned about the size of the building and if the business fails, what would happen to it. Neither is she comfortable with the entire building being used as offices or the sale of alcohol. Reilly agreed with Jeton. Anderson observed, after looking through the file & considering the possibilities, that the sale of gas at this site started in 1936, and from 1903 to 1936 there was no gas. He also observed that prior to 1950 it was a country type store. Thus, it is reverting to a former use. With a bigger building and better store. The Petitioner has a track record of sensitive development and ownership. This is the right proposal at the right time. Brown voiced concern about the enforcement of the proposed concept. The Board discussed whether they could enforce the type of products sold & Brown's uncertainty. Anderson emphasized the condition that it can't be a franchise without returning to the ZBA. Anderson suggested a straw vote & revision of the draft for further review & finalization. McDonough asked about the square footage of the offices. Anderson stated that it would be the square footage of the ground floor minus the eaves. Reilly commented that the 3500 sq. ft. footprint is not a large commercial building & that it will have to meet setbacks. Anderson didn't want to hash out conditions if only three members will vote in favor. McDonough reemphasized her concern for beer/wine sales & office space. Anderson assured her that the use is limited to the operator of the store & Perkins and his developmental trust. McDonough worried that the amount of office space would bring future tenants. Brown pointed out that it hadn't been established how much space Perkins needs for his own use. Anderson asked McDonough to come back with a proposed condition for the office space (i.e. 'x' number of square feet maximum) and to think about if she wants the ZBA to regulate the sale of beer/wine (i.e. only 'x' % of sales be comprised of beer/wine) or if she can propose a condition to allow a flexible business plan. Anderson asked Brown to come up with words for the building concept (style, massing, etc.) subject to Planning Board approval. Anderson emphasized that he is not dictating, but giving parameters for the layout, size and appearance. Anderson will consider the franchise issue himself. McDonough suggested thinking about whether the special permit should run with the owner or the property. Jeton made a motion to re-open the public hearing so the additional information can be discussed with the public & continue the public hearing to August 2nd. Brown seconded the motion & the Board voted (5-0) to re-open the public hearing and continue to August 2nd. Anderson stated that Perkins could submit information to the ZBA Secretary, which can then be transmitted to the Board. There is to be no telephone or e-mail discussion between Perkins & Board members directly.

The Board voted (5-0) to approve the June minutes.

Meeting adjourned at 8:30 pm.